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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/613,633 | 07/03/2003 | Eric M. Weaver | P03592US03 | 4613 |

22885 7590 05/02/2005

MCKEE, VOORHEES & SEASE, P.L.C.
801 GRAND AVENUE
SUITE 3200
DES MOINES, IA 50309-2721

EXAMINER

KIM, YUNSOO

| | |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
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1644

DATE MAILED: 05/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/613,633

Applicant(s)

WEAVER ET AL.

Examiner

Yunsoo Kim

Art Unit

1644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/3/03.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

RD

DETAILED ACTION

1. Claims 9-21 are pending.
2. Applicants' election without traverse of Group II drawn to claims 9-21 in the reply filed on 3/14/05 is acknowledged.

Therefore, claims 9-21 drawn to a method of improving weight gain by administering a supplement are currently being examined.

3. Applicants' IDS filed on 7/3/03 has been acknowledged. However, foreign patents and non-patent literature have not been considered as Applicants failed to provide the copies of the references.

4. Claims 10-21 are objected to because of the following informalities: claims 10-21 fail to use a proper article "the" and "administered" in claim 20.

5. Claim 15 is objected to under 37 CFR. 1.75(d)1 as failing to provide proper antecedent basis for the claimed subject matter. Claim 15 recites "about". The specification discloses "approximately" in p.16, line 9. The metes and bounds of the terms "about" and "approximately" are different. Applicants are invited to use the language of the specification in the claim.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 9-21 are indefinite being dependent on a non-elected claim and should be written as independent claims.

8. Claims 14 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. "0.1% by weight" in claim 15 broadens the scope of claim 14.

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9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 9-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Newson et al. (U.S. Pat. No. 4,096,244).

Newson et al. teach a use of blood-derived immunoglobulin in a supplement for a piglet (col. 3-4, Example 1). Newson et al. further teach the serum is pooled from swine or cattle (col. 3, lines 1-3), decreasing mortality (col. 6, table 1, % survival increased), at least 15% of immunoglobulin by weight and water stable (col. 3, lines 54-55, in aqueous mixture, col. 4, lines 16-42), additives (i.e. vitamin or mineral, col. 4, lines 15-36, col. 5, lines 38-44), in aqueous mixture (col. 4, lines, 16-42), 0.5g immunoglobulin/hd/day or more (1g to 3g, col. lines 39-43) and young piglets (from day one to 21st day, col. 5-6 under example 1).

The claimed functional limitation (improving weight gain) would be inherent property of the referenced formulation. The reference composition is applied to the identical population as in claimed invention.

As on p. 10, 1st paragraph of the specification of the instant application, post weaning piglets have been considered as underweight, claim 13 has been included.

Thus, prior art teachings anticipate the instant claimed invention.

No claims are allowable.

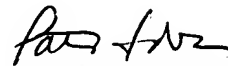
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yunsoo Kim whose telephone number is 571-272-3176. The examiner can normally be reached on Monday thru Friday 8:30 - 5:00PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on 571-272-0841. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Yunsoo Kim
Patent Examiner
Technology Center 1600
April 18, 2005


Patrick J. Nolan, Ph.D.
Primary Examiner
Technology Center 1600
April 18, 2005